

ADOT File No.: IGA/JPA 11-037I
AG Contract No.: P001 2012 000034
Project: Drainage & Roadway
Improvements
Section: Davis Road SR 80 to SR 191
Project No.: CCH-0(202)A
TRACS No.: SS954 01R/01C
TIP/STIP No.: SEAGO 2012 Amend #1
Budget Source Item No.: LOCAL

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
COCHISE COUNTY

THIS AGREEMENT is entered into this date PLEASE DO NOT ENTER, 2012, pursuant to the Arizona Revised Statutes §§ 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and COCHISE COUNTY, acting by and through its BOARD OF SUPERVISORS (the "County"). The State and the County are collectively referred to as "Parties".

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
 2. The County is empowered by Arizona Revised Statutes § 11-251 to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the County.
 3. Such Project lies within the boundary of the County and has been selected by the County; the survey of the Project has been completed; and the plans, estimates and specifications will be prepared and, as required, submitted by the State to the Federal Highway Administration (FHWA) for its approval.
 4. The work proposed under this agreement is comprised of drainage and realignment roadway work located along Davis Road from State Route 80 to State Route 191, hereinafter referred hereinafter referred to as the "Project". The Project's drainage improvements include several large span arch culverts to convey 25-year discharges under Davis Road, at MP 5.1, MP 9.9 and MP 13.1. Horizontal and vertical curve improvements will also be constructed on the roadway to improve safety conditions and accommodate a design speed of 65 mph. Proposed roadway improvements consist of two 12-foot travel lanes and two 8-foot shoulders for a roadway width of 40 feet. The new right-of-way width will vary between 100 and 200 feet, centered on the new roadway centerline. The State shall advertise, bid and award the Project.
 5. The interest of the State in this project is the acquisition and distribution of federal funds for the use and benefit of the County and to authorize such federal funds for the project pursuant to Federal law and regulations. The State shall be the designated agent for the County.
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6. The Federal funds will be used for the construction of the project, including right of way acquisition, construction engineering and administration cost (CE).

The current estimated Project costs are as follows:

ADOT Project No. SS954

Design review fee *	\$ 10,000.00
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SS954 01R (Right of Way acquisition):

Federal-aid funds @ 94.3% (capped)	\$ 381,915.00
County's match @ 5.7%	\$ 23,085.00

Subtotal – Right of Way Project Costs	\$ 405,000.00
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SS954 01C (construction):

Federal-aid funds @ 94.3% (capped)	\$ 1,993,821.00
County's match @ 5.7%	\$ 120,517.00

Subtotal – Construction** (State administered)	\$ 2,114,338.00
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Total Federal Funds	\$ 2,375,736.00
Total Estimated County Funds	\$ 153,602.00

TOTAL Project Cost	\$ 2,529,338.00
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* (Included in the County Estimated Funds)

** (Includes 15% CE and 5% Project contingencies)

The Parties acknowledge that the final bid amount may exceed the initial estimate(s) shown above, and in such case, the **County** is responsible for, and agrees to pay, any and all eventual, actual costs exceeding the initial estimate. If the final bid amount is less than the initial estimate, the difference between the final bid amount and the initial estimate will be de-obligated or otherwise released from the Project. The **County** acknowledges it remains responsible for, and agrees to pay according to the terms of this Agreement, any and all eventual, actual costs exceeding the final bid amount.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State will:

a. Upon execution of this Agreement, and prior to performing or authorizing any work, invoice the County for the State's design review fee, currently estimated at **\$10,000.00** and the County's estimated share of Project right of way acquisition costs currently estimated at **\$23,085.00**. Once the Project costs have been finalized, the State will either invoice or reimburse the County for the difference between estimated and actual costs for the right of way acquisition. The State will prepare a final reconciliation upon completion of the Project.

b. Upon receipt of the design review fee and the County's estimated share of the Project right of way acquisition costs, currently estimated at **\$23,085.00**, on behalf and with consent of the County, contract with one of the State's on-call consultants ("Consultant") to prepare all pertaining documents for the project's right of way acquisition; review and approve documents required by FHWA to qualify the Project for and to receive federal funds, provide comments to the County as appropriate. Such documents may consist of, but are not specifically limited to, environmental documents, including the preparation of the analysis requirements for documentation of environmental categorical exclusion determinations; review of reports, design plans, maps, and specifications; geologic materials testing and analysis; right-of-way requirements and activities and such other related tasks essential to the achievement of the objectives of this Agreement; including issuing right of way clearance after review of the Consultant's right of way submittal.

c. Review the design plans, specifications and other such documents and services required for the right of way acquisition, construction bidding and construction of the Project and provide comments to the County as appropriate. Invoice the County for the County's share of Project construction costs estimated at **\$120,517.00**

d. On behalf of the County, perform work and prepare documents required by the FHWA to qualify certain projects for and to receive federal funds. Such work may consist of, but is not specifically limited to, the review and approval of the prepared environmental documents; the preparation of the analysis requirements for documentation of environmental categorical exclusion determinations; review of reports, design plans, maps, and specifications; geologic materials testing and analysis; right-of-way related activities and such other related tasks essential to the achievement of the objectives of this Agreement.

e. Upon receipt of the County's Project funds, request the maximum programmed federal funds for the construction of this Project. Should costs exceed the maximum federal funds available, it is understood and agreed that the County will be responsible for any overage. Costs incurred prior to authorization from the FHWA will not be eligible for reimbursement.

f. Upon approval by the FHWA and receipt of County's share of Project costs, proceed to advertise for, receive and open bids. The State will enter into a contract(s) with a firm(s) to whom the award is made for the construction of the Project; administer contracts(s) for the Project and make all payments to the contractor(s).

g. Not be obligated to maintain said Project, should the County fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.

2. The County will:

a. Upon execution of this Agreement, designate the State as authorized agent for the County.

b. Upon execution of the Agreement, and prior to the performance or authorization of any funding or work, process Invoice D211043 and remit to the State **\$10,000.00** for the State's review fee. Prior to bid advertisement for Right of Way Acquisition and within thirty (30) days of receipt of an invoice from the State, remit the County's share of the Project costs currently estimated at **\$23,085.00** to the State. Prior to bid advertisement for construction and within thirty (30) days of receipt of an invoice from the State, remit the County's share of the Project costs estimated at **\$120,517.00** to the State.

c. Prepare and provide the design documents required for construction of the Project and provide comments to the State as appropriate.

d. Be responsible for all costs in excess of the maximum amount of federal funds and for any costs ineligible for federal funds. Such costs shall be paid by the County within thirty (30) days of receipt of invoice from the State.

e. Monitor, and as required, be involved with all right of way activities and functions performed by the Consultant, including, but not specifically limited to, right of way survey, delineation, appraisal, review appraisal, acquisition, relocation and property management.

f. Certify that all necessary rights-of-way have been or will be acquired prior to advertisement for bid and also certify that all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the Project area, shall be removed from the proposed right-of-way, or will be removed prior to the start of construction. Coordinate with the appropriate State's Right-of-Way personnel during any right-of-way process performed by the County, if applicable.

g. Hereby grant the State, its agents and/or contractors, without cost, the right to enter County Rights-of-Way, as required, to conduct any and all construction and preconstruction related activities, including without limitation, temporary construction easements or temporary Rights-of-Entry to accomplish among other things, soil and foundation investigations.

h. Be responsible for any and all costs attributable to any engineering change orders requested by the County not covered by federal funds. The County will also be responsible for contractor claims for additional compensation caused by Project delays attributable to the County.

i. Provide for cost and proper maintenance of the Project, including all of the Project components.

j. Enter into an agreement with the design consultant which states that the design consultant shall provide professional post-design services as required and requested throughout and upon completion of the construction phase of the Project.

k. Provide a set of as-built plans upon completion of the construction phase of the Project. An electronic version of the as-built plans shall be forwarded to Arizona Department of Transportation Local Government Section.

l. Agree to accept, maintain and assume full responsibility of said Project and provide the State written notification that the Project has been completed.

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of said Project, except any provisions for maintenance/electrical power and/or landscaping maintenance shall be perpetual by the County. Further, this Agreement may be cancelled at any time prior to advertisement of the project construction contract, upon thirty (30) days written notice to the other party. It is understood and agreed that, in the event the County terminates this Agreement, the State shall in no way be obligated to maintain said Project.

2. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction Project. The County, in regard to the County's relationship with the State only, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that the State's participation is confined solely to securing federal aid on behalf of the County and the fulfillment of any other responsibilities of the State as specifically set forth herein; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification

thereof shall be the liability of the County and that to the extent permitted by law, the County hereby agrees to save and hold harmless, defend and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all costs and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or non performance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, or its independent contractors, the County, any of its agents, officers and employees, or its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

3. This agreement shall remain in force and effect until completion of the work and related deposits and reimbursements.

4. The cost of right of way acquisition, construction and construction engineering work under this Agreement is to be covered by the federal funds set aside for this Project, up to the maximum available. The County acknowledges that the eventual actual costs may exceed the maximum available amount of federal funds, or that certain costs may not be accepted by the federal government as eligible for federal funds. Therefore, the County agrees to furnish and provide the difference between actual costs and the federal funds received within thirty (30) days of receipt of an invoice from the State.

5. The cost of the project under this Agreement includes applicable indirect costs approved by the Federal Highway Administration (FHWA).

6. The County and the State (Arizona Department of Transportation) (ADOT) warrant compliance with the Federal Funding Accountability and Transparency Act of 2006 and associated 2008 Amendments (the "Act"). Additionally, in a timely manner, the County will provide information that is requested by the State (ADOT) to enable the State (ADOT) to comply with the requirements of the Act, as may be applicable.

7. This Agreement shall become effective upon signing and dating of the Determination Letter by the State's Attorney General.

8. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

9. To the extent applicable under law, the provisions set forth in Arizona Revised Statutes § 35-214 and § 35-215 shall apply to this Agreement.

10. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 2009-09 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

11. Non-Availability of Funds: Every obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the fulfillment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments as a result of termination under this paragraph.

12. In the event of any controversy, which may arise out of this Agreement, the Parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

13. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue, Mail Drop 637E
Phoenix, Arizona 85007
(602) 712-7124
(602) 712-3132 Fax

**Cochise County
Community Development
Department**
Attn: Karen Lamberton, AICP
1415 Melody Lane, Building E
Bisbee, Arizona 85603
(520) 432-9240
(520) 432-9278 Fax
klamberton@cochise.az.gov

For Financial Matters:
Cochise County
Attn: Anissa Acedo
1415 Melody Lane, Building E
Bisbee, Arizona 85603
(520) 432-9300
(520) 432-9278 Fax
aacedo@cochise.az.gov

14. Compliance requirements for Arizona Revised Statutes § 41-4401—immigration laws and E-Verify requirement:

a. The County warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Arizona Revised Statutes § 23-214(A).

b. A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the Agreement, and the County may be subject to penalties up to and including termination of the Agreement.

c. The State retains the legal right to inspect the papers of any employee who works on the Project to ensure that the County or subcontractor is complying with the warranty under paragraph (a).

15. Pursuant to Arizona Revised Statutes § 35-391.06 and § 35-393.06, each Party certifies that it does not have a scrutinized business operation in Sudan or Iran. For the purpose of this Section the term "scrutinized business operations" shall have the meanings set forth in Arizona Revised Statutes § 35-391 and/or § 35-393, as applicable. If any Party determines that another Party submitted a false certification, that Party may impose remedies as provided by law including terminating this Agreement.

16. The Parties hereto shall comply with all applicable laws, rules, regulations and ordinances, as may be amended.

17. In accordance with Arizona Revised Statutes § 11-952(D) attached hereto and incorporated herein is the written determination of each party's legal counsel and that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

COCHISE COUNTY

By _____
RICHARD R. SEARLE
Chairman of the Board

STATE OF ARIZONA

Department of Transportation

By _____
DALLAS HAMMIT, P.E.
Deputy State Engineer, Development

ATTEST:

By _____
KATIE A. HOWARD
County Clerk

ATTORNEY APPROVAL FORM FOR THE COCHISE COUNTY

I have reviewed the above-referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the COCHISE COUNTY, an Agreement among public agencies which, has been reviewed pursuant to Arizona Revised Statutes §§ 11-951 through 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the County under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this _____ day of _____, 2012.

County Attorney